

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 671 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

-----  
YUSUFKHAN SARVARKHAN PATHAN

Versus

COMMISSIONER OF POLICE

-----  
Appearance:

MR NM KAPADIA for the Petitioner.

MR. HL JANI, AGP, for the Respondents.

RULE SERVED for Respondent No. 3

-----  
CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 27/07/98

ORAL JUDGEMENT

The petitioner, who is the father of detenu Raufkhan Yusufkhan Pathan , who is detained by an order dated 13-1-98 passed by the Police Commissioner, Surat City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ( hereinafter referred

to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on three criminal cases registered against him by Athwa Lines Police Station for offences punishable under sections 66(1)(b), 65E and 81 of the Bombay Prohibition Act which are pending trial before the Court . Over and above these two criminal cases, the detaining authority has also relied on the statements of certain witnesses for the incidents alleged to have taken place on 25-10-97, 20-11-97 and 11-12-97 wherein the witnesses were beaten by the detenu and his associates on the public road either for refusing to accompany the detenu for bringing liquor or on the ground of harassment to the customers of the detenu coming for consuming liquor or on the ground of not parting with the vehicle for bringing foreign liquor. On all these occasions when the witnesses were beaten, many people had gathered . However, none interfered because of the fear of the detenu. Not only that people started running helter-skelter after closing down their shops, cabins and gallas and because of which an atmosphere of fear and terror was created.

On the basis of the aforesaid material, the detaining authority recorded a finding that the detenu is a boot-legger within the meaning of Section 2(b) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the detenu, which has been challenged by the petitioner by way of this petition.

On behalf of the petitioner, it was contended that even if the allegations made against the detenu are accepted as true, it is too much to brand him as a boot legger. The Supreme Court in Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the questio of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the prersent case. The allegations made

against the detenu by the witnesses are minor incidents of beating by the detenu and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

In the result, this petition is allowed. The order of detention dated 13-1-98 is quashed and set aside. The detenu Raufkhan Yusufkhan Pathan is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

\*\*\*\*\*

Verified copy